Comments to the US Environmental Protection Agency
from the City of Portsmouth New Hampshire
January 28, 2009

Thank you for the opportunity to provide comment with regard to the proposed changes, dated December 23, 2008, to the Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Small Municipal Separate Storm Sewer Systems (MS4s) in New Hampshire. The City of Portsmouth, New Hampshire with a population of approximately 21,000, consists of approximately 17 square miles and is located on the Piscataqua River. Portsmouth's City storm drain infrastructure consists of approximately 323,000 lineal feet of pipe, 4,700 catch basins or manhole structures and 450 outfalls. This proposed General Permit would be applicable to the City's Separated Storm Sewer system, and as such, the City is providing the following comments.

The City of Portsmouth agrees with the intent and goal of the Clean Water Act. Clean water, for all to thrive in the community, is important. However, the proposed regulations are excessively burdensome and some components will not help achieve clean water. Several general comments applicable to the overall permit conditions are provided at the beginning of this document, and subsequent comments more specific to the requirements are provided in the same sequential order as listed in the Permit.

General Comments:

1. The Permit, as drafted, would create a significant administrative burden for the City that would *detract* from its ability to provide direct benefits to water quality through such activities as increased street sweeping, increased catch basin cleaning, removal of illicit discharges, and/or conducting inspections of construction sites. The City has estimated that approximately 2,000 staff hours would be required to comply with the administrative components of the draft Permit such as tracking and annual reporting. The total estimated cost to comply with this Permit, an additional $2,100,000 over the five year permit cycle, would constitute a 6-7% increase in the City's current Public Works budget. Due to the current national economic crisis, the Portsmouth

City Council has mandated a zero increase in the all City budgets, therefore other essential programs would need to be reduced or cut to accommodate these expenditures.

2. Many of the deadlines provided in the draft Permit do not allow sufficient time to allocate funding to complete the tasks required. The City's budget process requires months of planning, hearings, and work sessions before final approval by the City Council. The budget process for the City's next fiscal year, beginning July 1, 2009; is already underway with a final vote expected in late May or June. The City requests that no item in the permit be required to be completed during the first Permit Year except the preparation of the Stormwater Management Plan (SWMP).

Section-Specific Comments:

1.4 Non-Stormwater Discharges: This section states that the listed Non-Stormwater Discharges are assumed to be acceptable unless EPA, the State, or the permittee identify that they are significant sources of pollutants. This statement, which presumes that the listed non-stormwater discharges are acceptable unless proven otherwise, is consistent with the previous USEPA MS4 General Permit for NH, MA, and VT (2003 – 2008), and the related (MSGP 2000 and 2008) permits. However, Section 1.4 appears to be in direct conflict with Section 2.3.4.4 (page 18) of this Draft General Permit, which identifies that, "The permittee must evaluate the sources of non-stormwater discharges in Part 1.4 and determine whether these sources are significant contributors of pollutants to the municipal system… The permittee must document in the SWMP its determinations on each of the non-stormwater discharges listed in Part 1.4."

Section 1.8 Alternative Permits:
Please identify any petitions that have been received for New Hampshire, or which may be pending submittal to the USEPA.

Section 2.2.3 Discharge to Chloride Impaired Water in New Hampshire: The requirements of the permittees in this section are excessively burdensome and an inappropriate delegation of responsibility. The New Hampshire Department of Environmental Services (NHDES) is

scheduled to issue Total Maximum Daily Load reports (TMDLs) for chloride impaired water bodies in and around Portsmouth over the next 5 to 10 years. The requirements of this draft Permit appear to be designed to shift responsibility from the NHDES to the municipality to identify the source of the impairment. It is not appropriate for the USEPA to use this General Permit to mandate that the City acquire information about the source of the chloride impairment.

Within the City of Portsmouth, there are 130 privately owned parcels of land within the eight watersheds of the surface waters that are identified as chloride impaired. In addition, a number of the major roadways within the watersheds, including Interstate 95, are maintained by the State of New Hampshire. Requiring the City to obtain information about the quantity of chloride-based deicing chemicals applied during each storm event at each of the 130 parcels that contain private or public parking lots or roads is anticipated to cost the City $5,600 annually.

The remainder of the Chloride Impaired Water program described in this draft Permit includes requirements for those non-municipal entities to conform to specific application rates, to calibrate application equipment, to cover their piles, and a requirement to educate those entities on best management practices for deicing materials. This is a significant enforcement burden. The City of Portsmouth believes the TMDL documents, not this General Permit, should specify the corrective actions necessary and this section should be removed.

Section 2.3.2 Public Education and Outreach: Current studies show that the majority of the public does not understand how stormwater can become polluted and how it can contribute to water quality issues. Most of the public still believes that catchbasins in their roads transport stormwater to a treatment facility prior to discharge. In addition, most people do not understand the concept of a watershed, or the concepts related to the water cycle (rainfall, runoff, infiltration, and evapotranspiration). A significant amount of awareness-raising must be done across the United States prior to an individual community education/outreach campaign in order to truly stimulate behavior changes in the general public. The City of Portsmouth, like many other municipalities, sees a large influx of visitors during the tourist season and thus education must extend well beyond the immediate locality to be truly effective.

The City supports the requirements to provide public education materials related to the four sectors identified in the General Permit, however it is beyond any individual municipality's means to conduct a truly meaningful effective campaign. A national education program, such as that promoted by Keep America Beautiful in the 1970's, could provide a consistent and transferable message that regulated MS4s could use in developing further promotional materials. At a minimum, the USEPA should provide a template or umbrella program for education of stormwater issues that each municipality could modify to be specific to the municipality's waters. Engaging a public relations firm to identify messages that can be effective is a lengthy and expensive process that should not be imposed upon smaller communities or single cities. It will likely take any party at least 6 months to identify a target audience and message, and develop an evaluation protocol. The USEPA is in a better position to create and evaluate the effectiveness of any public education messages. The City of Portsmouth has participated with the Seacoast Coalition on storm water educational initiatives in the past and is particularly sensitive to the need for a properly funded, broad sweeping public education program in lieu of inadequately-funded local initiatives.

Should the USEPA persist in delegating this important educational component to individual municipalities, these requirements should be targeted for Permit Years 2 and 3, not Permit Years 1 and 2. This would provide a greater opportunity for municipalities to work together to develop a more effective educational message.

2.3.4 Illicit Discharge Detection and Elimination Program:

2.3.4.2 a through d: Most municipalities or quasi-municipal sewer districts, including the City of Portsmouth, are required to report to the USEPA on Sanitary Sewer Overflows (SSOs) as part of their NPDES permits for their wastewater treatment plants. This requirement for additional reporting is redundant. The City of Portsmouth recommends it be removed from the General Permit Requirements.

Section 2.3.4.4: This section of the IDDE requirements references the listing of allowable Non-Stormwater Discharges from Section 1.4. The Section 1.4 language implies that these listed

Non-Stormwater Discharges are acceptable unless proven otherwise. The language in Section 2.3.4.4 implies the permittee must undertake a comprehensive analysis of each of the non-stormwater discharges listed in order to prove that they do not cause or contribute to water quality issues. The City of Portsmouth believes that the USEPA or the State should be responsible for such a study that would benefit all permittees. In addition, because this analysis is required to be contained in the SWMP, it would need to be completed within 120 days of the effective date of the permit. Insufficient time has been allotted if this permit requirement remains.

The City of Portsmouth recommends that the language in 2.3.4.4 be removed completely or revised to reflect that only when the listed non-stormwater discharges are observed during illicit discharge detection and elimination (IDDE) inspections would an evaluation be conducted to determine if the discharge is a significant contributor of pollutants. For example, identification of a dry weather discharge that is determined to be water line flushing would be evaluated to determine if it is a significant contributor of pollutants. This evaluation could consist of a visual assessment of the discharge for solids (suspended and dissolved) and visual assessment of the receiving water to ensure it was not causing excessive erosion.

2.3.4.6 Written IDDE Program: Item "a" appropriately references the legal authority for illicit discharges required by the MS4-2003 General Permit. Similar references should be added to the following IDDE sections because many municipalities have already completed these tasks as they were also required by the MS4-2003 General Permit:

b. Illicit discharge potential assessment and prioritization of catchments within the MS4,
c. Written protocol of responsibilities for eliminating illicit discharges,
d. Written systematic procedure for locating illicit connections (this section should also be modified to acknowledge that if a municipality has already walked the shorelines of their waters to develop their map and confirm the illicit discharge potential as part of the MS4-2003 protocol, they need only continue to evaluate their high priority waters as part of this General Permit using the dry weather monitoring protocol),

e. Procedures designed to prevent illicit discharges, and
f. An indicator and tracking program.

In particular the City of Portsmouth worked with the Seacoast Coalitions Communities to develop a manual that identified procedures to fulfill these requirements under the MS4-2003 General Permit and used the procedures to document these items for its community.

2.3.4 Construction Site Stormwater Runoff Control:

Can the EPA provide a template for construction site inspections?

2.3.6 Stormwater Management in New Development and Redevelopment:

2.3.6.5 Requirements for as-built drawings within 90 days is not reasonable. Allow the permittee to provide at least one year for developers to submit as-built plans.

2.3.6.8 Directly Connected Impervious Area: The requirement to complete an inventory and prioritization of MS4-owned property and infrastructure that may have the potential to be retrofitted is a burdensome and inappropriate requirement. The City of Portsmouth owns 184 parcels of land totaling 1,140 acres. The City estimates a cost of at least $54,000 to complete this task. Those funds could be better spent on already identified storm water treatment infrastructure needs and operational activities. Retrofits should be applied as corrective measures for areas that are already impaired from polluted stormwater runoff, or as opportunistic when a property is already planned for redevelopment. This requirement should be removed from the General Permit.

2.3.7.1.d Catchbasin Cleaning: The City of Portsmouth developed a catchbasin inspection, cleaning and repair schedule as part of a Stormwater Master Plan project. The program includes inspection of all catchbasins annually and cleaning any that have sediment within 6-inches of the lowest invert in the structure (estimated to be approximately 20 to 25% of the structures). To require cleaning of an additional 25% of structures, whether they need it or not, would cost the City an additional 1000 labor hours. The requirement for cleaning within a given time frame should be removed if annual inspections are required.

3.0 Outfall Monitoring Program:

Section 3.1.2 should be modified to acknowledge that the dry weather analytical monitoring is only required for flowing outfalls, and that if a permittee conducted dry weather screening during the 2003 – 2008 permit cycle and determined the illicit discharge potential was low or medium, further screening is not required. The City's cost to complete the dry weather screening as currently presented in the Draft General Permit would be approximately $13,000 per year.

Section 3.3 Wet Weather Analytical Monitoring:

The utility of this data will be limited because it will likely be collected during a variety of non-comparable storm events. In addition, this is a burdensome requirement. Wet weather sampling will require crews of two people to minimize the dangers of conducting sampling near water bodies during storm conditions. In addition, the hold times required for the e-coli and enterococcus samples are 24-hours. In order to transport the sample to the lab and allow laboratories time to conduct the analyses within the required hold time, the City would need to limit sample collection to 10-20 samples per storm event. To achieve the sampling requirement of 25% of the City's outfalls each year, 5 to 10 storm events would need to be sampled. The City of Portsmouth estimates it will cost $98,000 per year to conduct wet weather monitoring. We believe this requirement should be removed from the General Permit altogether. At most a range of storm sizes should be specified, and a set of representative outfalls should be sampled only when an event can be sampled during regular business hours.

Appendix E Notice of Intent:

The suggested form provided by the USEPA in Appendix E requires that information related to the 2003 SWMP be provided. Most MS4s submitted annual reports that already provided this requested information. In addition, the requirements for each minimum control measure state that the MS4 must continue those BMPs from the previous permit that are still appropriate. If a permittees prior annual report and future SWMP already contain this information, does it need to be provided again in a separate section?

Thank you for the opportunity to provide comments to this proposed permit for stormwater discharges from small municipal separate storm sewer systems.

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